

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1185 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BIJAL CHANDRESHBHAI BHATT

Versus

CHANDRESHBHAI SAHDEVBHAI BHATT

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Appearance:

MR JB DASTOOR for Petitioner

MR AJ SHASTRI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/12/98

ORAL JUDGEMENT

#. The applicant - Smt. Brijal Chandreshbhai Bhatt and the respondent - Shri Chandreshbhai Sahdevbhai Bhatt are present in-person. Both of them have been identified by their advocates.

#. This civil revision application arises from the order of the 2nd Joint Civil Judge (S.D.) and JMFC, Mahesana, dated 4.7.98 passed in Hindu Marriage Petition No.237 of 1997, under which maintenance of Rs.250/= to the wife and

Rs.200/= to the minor daughter 'Anvesha' has been ordered. This female child is residing with wife-applicant. There is no dispute regarding guardianship of this female child.

#. The respondent-husband filed a petition for dissolution of marriage by decree of divorce before the Joint Civil Judge (S.D.), Mahesana. Divorce has been prayed for on the ground of desertion under Section 13(i)(b) of the Hindu Marriage Act, 1955. This petition has been filed in the year 1997.

#. It is not in dispute between the parties that that they are residing separately since 10.5.1994. During pendency of this civil revision application the parties have settled their disputes and the memorandum of settlement has also been arrived at which is signed by both the parties and their advocates. This memorandum of settlement is taken on record of this civil revision application. They have also filed a joint application under Section 13B of the Hindu Marriage Act, 1955, and prayed for dissolution of their marriage by decree of divorce by mutual consent.

#. Ordinarily, in such matters, the parties should be relegated to the District Court for passing of appropriate decree of dissolution of marriage by mutual consent under Section 13B of the Act, 1955, but for two reasons, I am not adopting that course. Firstly, both the learned counsel for the parties and the parties have prayed that this Court may pass a decree here. Secondly, the applicant-wife has made a serious grievance that in case she has been relegated to the trial Court then there is all possibility of incurring by her further expenses of litigations. My own experience goes to show that in this State, litigation is very very costly. It is understandable that in litigations other than the litigation filed under the category of matrimonial dispute, whatever amount the advocates consider reasonable, they may charge as their professional fees, but this litigation in fact and substance is not a litigation. Truly speaking, these are personal human problems, disputes and differences. When the husband and wife are unable to reconcile themselves and resolve their differences and dispute they approach to the Courts and as far as possible, the Courts' approach are also not to decide such matters as a legal disputes but disputes of husband and wife, and sometimes to decide the dispute where the question of maintenance or guardianship or taking care of children in future may arise. So all these matters are decided by the Courts by taking into

consideration humanitarian approach and all endeavour has to be made to see that as far as possible, couple is reunited and only in exceptional cases where it is difficult for them to reunite then on their request, ultimately the Court may grant a decree for dissolution of their marriage by mutual consent.

#. In the Chamber, I had an occasion to talk to two ladies who have come in their matrimonial disputes with their husbands. In one case where a simple matrimonial dispute had arisen, I am not correctly remembering whether under Section 9 or Section 13 of the Act, 1955, it has culminated in 36 cases. That lady having tears in her eyes informed the Court that she has spent Rs.80,000/= towards the payment of Advocates' fees and other litigation expenses. It is really a pitiable condition of the lady who was getting only Rs.1200/= per month as maintenance from her husband how she has managed and arranged for this huge amount to be paid as fees and for other litigation expenses.

#. Second case had also arisen from the matrimonial dispute under Section 13 of the Act, 1955 and there also, one case culminated in ten or twelve cases and where that lady had paid Rs.60,000/= towards fees to the advocates and litigation expenses. On being asked by the Court wherefrom she had arranged such a huge amount, it is really pitiable and shocking to state here that her father had paid this amount for her from his retirement benefits. Though these are not relevant facts to this case to be stated here, but I am stating these here to show why in many of the cases where the parties have decided to dissolve their marriage by decree of divorce by mutual consent, I am passing decree in proceedings before this Court itself.

#. We are talking of Article 39A, and Article 21 of the Constitution and State Legal Services Authority Act, 1987, and though the later Act provides complete free legal services to women and minor children, irrespective of the fact as to what is their income, no litigant of this category is approaching to this authority. It is understandable and I also admit that we are also to certain extent not able to send message to grass-root level despite of holding thousands of literacy camps and Lok Adalats. There may be variety of reasons and difficulties for doing so but it is equally a pious obligation and professional duty of the advocates to let this class of persons to know that they are not required to spend a single pie in such litigation and they may approach to the Authority under the Act aforesaid and

that Authority will take care of this category of litigations. However, one thing I consider it to be appropriate, necessary and advisable to mention here that the authority which are concerned with providing legal services to the category of these litigants should take care that competent senior advocates are being requested to provide professional services to this class of litigants. It is also a matter for consideration that Legal Services Authority provides the litigants services of the new comers or sufficiently junior advocates and it may be one of the reasons that this class of litigants may not approach to the said Authority. However, it is for the persons who are concerned with this programme and whatever I feel, have my own impression, feelings and opinion, am expressing here. The Registrar is directed to place copy of this order for perusal of the Hon'ble the Chief Justice as well as before brother Mr. Justice J.N. Bhatt, Executive Director of the Authority.

#. If we go by the facts of this case, then the condition may not be worse as it was there in two cited cases. But here also, the parties have four litigations, atleast out of which three have arisen from the matrimonial dispute. I talked both to husband and wife on two occasions earlier and I am constrained to observe that they themselves are responsible to reach to this stage where now it has become impossible for them to reconcile. Unfortunately, or it may be ill-advised, the husband involved the wife in a case of theft and she has been arrested and remained in police custody for about twelve hours. A litigation of criminal nature on the part of the husband against the wife certainly added fuel to fire. Naturally, when the husband has gone to that extent, the wife has not spared him also and she has gone a step further by filing a Criminal Complaint for the offences punishable under Section 498A of the IPC in which, what the learned counsel for the husband has given out, that almost all the family members were made accused. Both these cases have been decided not on merits but as the parties have decided to settle their disputes, their advocates have found out the way and ultimately in both the cases, the accused therein were acquitted. So those litigations are now no more there. Out of this matrimonial dispute two disputes, one an application for temporary maintenance under Section 24 of the Act, 1955, and this civil revision application have arisen. Sub-section 2 of Section 13B of the Act, 1955, makes a provision for giving of six months' time initially which may be extended for 18 months before passing a decree on a joint application filed by parties (husband and wife) for dissolution of their marriage by

decree of divorce by mutual consent. However, this provision, as held by the Apex Court, is not mandatory and in an appropriate case, this period can be ordered to be dispensed with by the Court. Application under Section 13B of the Act, 1955, aforesaid has been submitted today in the Court and I consider it to be appropriate to dispense with the requirement of sub-section 2 of this Section for the reasons, namely (i) divorce petition is pending since 1997, (ii) both, husband and wife are living separately since 10th May 1994, (iii) relations of both of them have become so strained and bitter that both of them have filed counter criminal cases against each other and after talking to both of them now in no circumstances they are agreeable to reunite. In fact, they have finally decided to permanently separate themselves or wind-up their matrimonial relation.

##. The learned counsel for the parties have also given out before this Court that they have talked to their clients also and tried to pursue them to reunite but both are firm on their decision. I have again talked to both of them today in presence of their advocates and their relations, but their reunion seems to be not possible. They are not able to live together any more.

##. One of the most important question which needs to be considered by the Court to see the welfare of the wife and child, and in that context to see what amount should have been of permanent alimony to be given to her. On the question of what amount should have been a reasonable amount of permanent alimony, sufficient dialogue has been there in between the learned counsel for the parties and ultimately they have arrived at a figure of Rs.2 lacs. Though this amount of Rs.2 lacs seems slightly towards lower side. But looking to the total income of respondent-husband even to arrange this amount of Rs.2 lacs would have been difficult for him. If we consider this figure from another aspect of what presently the wife and child are getting as interim maintenance, then it seems to be towards higher side. But looking to his monthly income there are all possibility of enhancement of the amount of interim maintenance granted by the learned trial Court in this civil revision application.

##. So taking into consideration the average of the present amount of interim maintenance which she is getting and possible figure of the amount of interim maintenance that would have been enhanced by this Court and the service status of the husband-respondent, I consider it to be a reasonable and appropriate amount of

permanent alimony.

##. They are living separately for a period of more than one year, they have not been able to live together and finally they have now agreed to mutually get their marriage dissolved by a decree of divorce by mutual consent. Now I think no scope remains to pursue them to reunite and to dissolve their marriage by a decree of divorce by mutual consent seems to be in their larger interest so that atleast they may be freed from this litigation which may cost everyday to both of them. The welfare of child is also taken care of as this amount of Rs.2 lacs has been paid as permanent alimony and the husband-respondent has agreed that he will not claim guardianship or custody of this minor child and she will remain only with the petitioner-wife.

##. Before passing the final order, I consider it to be appropriate to see that this amount of Rs.2 lacs is sufficiently protected and remains with the lady and the child. The petitioner-wife has informed to this Court that she has already opened an account in State Bank of India, Vasna Branch, Ahmedabad, in her own name. Demand Drafts of Rs.2 lacs has been brought by the respondent-husband, the details of which are as under:

Demand Draft Number & Date    Amount (Rs.)

- (1) 415860 dt.21.12.98    50,000/=
- (2) 415861 dt.21.12.98    50,000/=
- (3) 415862 dt.21.12.98    50,000/=
- (4) 415863 dt.21.12.98    50,000/=

##. These four Demand Drafts have been handed over to the wife by the husband in presence of advocates of the parties. These Demand Drafts are in the joint names of wife and minor 'Anvesha'. The petitioner-wife stated before this Court that she want to keep Rs.1 lac in the long term F.D.R. in the name of her daughter 'Anvesha'. She has stated that she does not want to even withdraw interest on this amount of Rs.1 lac. So far as other amount of Rs.1 lac is concerned, she states that she has no objection in case it is ordered to be kept in long term F.D.R., initially for a period of five years. However, she states that she may be permitted to withdraw interest accruing thereon for her own maintenance and that of her child. The petitioner-wife has very reasonably come before this Court and this arrangement which she herself has given out is acceptable. Only one difficulty pointed out by the petitioner-wife is that unless this Court orders, the Bank may not give F.D.R.

for Rs.1 lac in the name of minor child.

##. Taking into consideration the totality of the facts of this case, I consider it to be appropriate and in the interest of the parties that the joint application filed by husband and wife for dissolution of their marriage by decree of divorce by mutual consent be granted. Accordingly, this application is ordered to be taken on the record and the marriage of Smt.Brijal Chandreshbhai Bhatt and Shri Chandreshbhai Sahdevbhai Bhatt solemnized on 26th May 1989 at Ahmedabad is ordered to be dissolved by a decree of divorce by mutual consent. The Registry is directed to draw the decree forthwith.

##. In view of the fact that the marriage between the parties has been dissolved by a decree of divorce by mutual consent, the Hindu Marriage Petition and this civil revision application stand dismissed. It is made clear that now the husband is not required to pay anything to the wife and child towards maintenance. It is expected of the State Bank of India, Vasna Branch, Ahmedabad, that in view of the order of this Court, it will deposit Rs.1 lac in the F.D.R. in the name of the minor, Anvesha, through her natural guardian, Smt.Brijal Chandreshbhai Bhatt, for a period of ten years. The Demand Drafts which are there in the name of petitioner-wife and minor child may be taken to be Drafts for opening F.D.R. account. The remaining amount of Rs.1 lac may be deposited in F.D.R. initially for a period of five years in the name of petitioner-wife. However, it is made clear that the Bank shall not permit any pre-mature withdrawal of amount as well as taking of any loan on this amount of any of the F.D.R.s. If the petitioner-wife needs withdrawal of the amount prematurely or take loan on any of the F.D.R.s, then it will be permissible only with prior sanction of the Court for which it is open to the petitioner either to approach to the Court at Mahesana or to this Court. No order as to costs.

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